

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6265 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHMED HABIB GULAM MOHMED MEMON

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner
MR PG DESAI, GOVT. PLEADER for Respondents No.1, 2
MR SR BRAHMBHATT for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The dispute in the present case relates to the inter-se seniority of the petitioner and the respondent No.3 in the cadre of Registrar in the Department of Technical Education of the Government of Gujarat. The respondent No.3 has already retired from the services

during the pendency of this Special Civil Application.

3. The recruitment and other service conditions of the Registrar is regulated under the rules framed under Article 309 of the Constitution. The petitioner was appointed on the post of Registrar at L.D. Engineering College on 1-5-1981 after having been selected and on the recommendation of the Gujarat Public Service Commission. At that time, the respondent No.3 was officiating purely on adhoc temporary basis on the post of Registrar at the said College. In the event of the selection and appointment of the petitioner, Shri Shah, the respondent No.3 was ordered to be reverted back to the post of Superintendent, but he did not resumed his duties on the lower post and proceeded on leave for the period from 1-5-1981 to 31-5-1981 though after handing over the charge of the post to the petitioner. However, in the meanwhile under the order dated 30th May, 1981, the respondent No.3 came to be posted as Registrar in R.C. Technical Institute at Ahmedabad. This posting again was on adhoc and temporary basis. The petitioner was promoted to the post of Administrative Officer in the scale of Rs.650-1200 w.e.f. 1-6-1982. However, later on he was reverted to the post of Registrar in the month of August, 1982.

4. It is not in dispute that the reversion of respondent No.3 from the post of Registrar to that of Superintendent has been approved by the Government and his leave for the period from 1-5-1981 to 31-5-1981 was sanctioned as Superintendent. The appointment of the respondent No.3 under the order dated 13th April, 1977 was for a period of 12 months or till the regularly selected candidate by G.P.S.C. is made available. However, as the candidate from G.P.S.C. was not made available, the respondent No.3 continued on adhoc temporary basis. On availability of the selectee from the G.P.S.C. i.e. the petitioner, he has been reverted. So his reversion was perfectly legal and justified. Under the order dated 30th May, 1981, again he has been given the adhoc promotion. So, the services of the respondent No.3 for seniority in the cadre of Registrar could not have been counted from the date of his adhoc appointment i.e. 29th April, 1977. The respondents have not given that from which date the respondent No.3 has been given the regular substantive appointment on the post of Registrar. It is a settled law that the adhoc services cannot be counted for seniority. The petitioner was given substantive appointment on the post of Registrar. It is true that his services has to be counted for seniority from 1st May, 1981, but the

respondent No.3 was only adhoc promotee on the said date and even if his services are taken to be continuous from 29th April, 1977 as a Registrar those were as adhoc, and as such, the respondents could not have treated him as senior to the petitioner. I fail to see any justification in reply of the respondents that the reversion of the respondent No.3 on 1-5-1981 was an illegality. It is a settled law that an adhoc promotee has no right to the post, and reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of State of Orissa vs. Dr. Prari Mohan Misra reported in JT 1995 (2) SC 54. As stated earlier, the respondents have not given out the date from which the respondent No.3 was given the substantive appointment on the post of Registrar. It is not the case of the respondents that the respondent No.3 has been given the substantive appointment on the post of Registrar on the basis of the recommendations of the selection committee from 29th April, 1977. It is a clear case where the respondents No.1 and 2 have favoured the respondent No.3 at the cost of the rights of the petitioner. Not only this, treating him senior he has been given further promotion to the post of Administrative Officer.

5. The net result of the aforesaid discussion is that the action of the respondents No.1 and 2 to treat the respondent No.3 senior to the petitioner in the cadre of Registrar is wholly arbitrary and unjustified.

6. In the result, this Special Civil Application succeeds and the same is allowed. It is hereby declared that the petitioner is senior to the respondent No.3 in the cadre of Registrar. The respondents No.1 and 2 are directed to consider the case of the petitioner for promotion on the post of Administrative Officer with reference to the date on which the respondent No.3 has been given the promotion. In case the petitioner is found suitable for promotion on the said post from the said date then he shall be entitled for all the consequential benefits. However, it is made clear that the respondent No.3 has already retired from the services, and as such, whatever benefits are given to him treating him senior to the petitioner may not be taken back as consequence of this judgment. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-